

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

February 1, 2007

A meeting of the Board of Environmental Protection was held on Thursday, February 1, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler

Board members Denis Culley and Richard Gould departed at approximately 1:50 p.m.

<b><u>Staff:</u></b>	Bureau of Air Quality	Marc Cone
	Bureau of Air Quality	Kathy Tarbuck
	Bureau of Land and Water Quality	Stephen McLaughlin
	Bureau of Land and Water Quality	William Bullard
	Bureau of Land and Water Quality	Linda Kokemuller
	Bureau of Land and Water Quality	James Cassida

**Others:** David P. Littell, Commissioner  
Peggy Bensinger, Assistant Attorney General  
Cynthia S. Bertocci, BEP Executive Analyst  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 3:00 p.m.)***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:**

Polybrominated diphenyl ethers: The Department's report on polybrominated diphenyl ethers (PBDEs) recommends a ban on the Decca congener for residential uses (e.g. electronic enclosures, TV, computers, residential upholstery and mattresses). The State of Washington supports this ban as well. Manufacturers are lobbying against this ban citing fire safety; however, the fire fighters union has written a letter in strong support of the decca ban because of the concerns with dioxin formation during fires. This will be considered by the Legislature during this session.

Departmental: The Department has appointed two new staff people to the Commissioner's Office. Susan Watson joins the Department as its new Director of the Office of Innovation and Assistance. Ms. Watson is currently the Economic Development Director in Topsham. Prior work experience includes employment with NESCAUM (Northeast States for Coordinated Air Use Management) and the Maine Energy and communities partnership.

The Department has also hired Mr. Steve Ward to facilitate the Department's Regional Greenhouse Gas Initiative. Mr. Ward's experience with the electrical community and his experience as a the State's Public Advocate will be a large asset to the Department.

Legislative: The Joint Standing Committee on Natural Resources has eight new members; there are 13 seats on the Committee.

Particulates: A recent Portland Press Herald story highlighted a new study from the Journal of Medicine concerning the health impact of fine particulates on women including an increased risk from cardiovascular disease. The study results tend to support contentions that EPA's current particulate standard is not adequate to protect health.

**QUESTIONS**

Board member M. Wing Goodale asked if the fine particulates referenced in the study would include emissions from outdoor wood-fired boilers.

*Commissioner Littell indicated that it would theoretically; however, outdoor wood boilers are not an air emission source that the Department licenses so no modeling on this type of source has been done for licensing purposes. This type of testing is expensive and the DEP does not have the infrastructure (monitoring devices) to conduct baseline testing near the residential locations with problem outdoor wood boilers. LD 128 would authorize the Department to regulate these types of boilers.*

Board member Ernest Hilton noted that the manufacturers are working together on incentives for a new standard.

*Commissioner Littell commented that NESCAUM has released a model rule, which Maine may use as a basis for a rule. The US Environmental Protection Agency announced a voluntary buy back program and a proposed air standard 0.6 lbs of particulate/mmbtu. Maine's preference is the NESCAUM rule, which uses a more stringent phased approach (Phase I 0.4 lbs/mmbtu and Phase II 0.3lbs/mmbtu).*

Board member Nancy Ziegler mentioned the controversy over the Reddington wind project and noted that she has heard comments from individuals who wish the permitting of wind power projects was handled differently and with more statewide planning.

*The Department has heard similar points of view on this matter. Statewide siting of windpower projects has been suggested and addressed before by the Maine Energy Council. The Department's position is that our licensing system works well for this type of project.*

*Assistant Attorney General Bensinger noted that, for proposed projects that would be located in both LURC and DEP jurisdiction, an existing law allows LURC to request that DEP/BEP take jurisdiction over the entire project so long as LURC zoning requirements are met.*

**B. COMMENTS FROM THE BEP CHAIR**

A pre-hearing conference concerning the Androscoggin River Appeals was held yesterday. The discussion focused on witness lists and the organization of the hearing. The goal is to ensure that the process is efficient and information is clear. Hearing location and a workshop for Board members were also discussed. The workshop may be conducted on March 1<sup>st</sup> and would cover water quality basics. The location of the hearing will be in Auburn.

**C. EXECUTIVE ANALYST COMMENTS:**

The 2006 Summary of Activities report was submitted to the Joint Standing Committee on Natural Resources.

The Dragon public hearing will continue on February 15 at 1:00 to complete testimony on the revised waste clinker pile leachate management system and the associated wetland impacts described in the NRPA application. Additionally, the parties want to file written briefs. Ms. Bertocci suggested the Board revisit the timing of a Board deliberative session following the conclusion of the hearing on February 15<sup>th</sup>.

**QUESTIONS**

With respect to the Kennebec River proceeding, Board member Nancy Ziegler asked if Board members will get information on the decision by the U.S. Fish and Wildlife Service not to list the American Eel as an endangered species.

*The Board's Executive Analyst noted that the parties' rebuttal testimony and the Department of Marine Resource testimony, which are due on Wednesday, will likely contain information on this matter.*

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|--------------------------------|----------|
| <b>D. BOARD CALENDAR:</b>      | Reviewed |
| <b>E. DEPARTMENTAL ORDERS:</b> | Reviewed |
| <b>F. EXECUTIVE SESSION:</b>   | None     |

## **II CONSENT AGENDA ITEMS**

Board voted (10-0-0-0) to approve consent agenda items 1, 2, 3, and 4, as presented.

*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion.*

1. INTERSTATE BRANDS CORPORATION, Biddeford – Administrative Consent Agreement (BAQ)
2. DARLING'S BANGOR FORD, Bangor – Administrative Consent Agreement (BAQ)
3. ENVIROVANTAGE, INC., York Beach - Administrative Consent Agreement (BRWM)
4. ALL STATE ABATEMENT PROFESSIONALS, INC., Wells - Administrative Consent Agreement and Enforcement Order (BRWM)

Board member Culley asked the Department to provide the Board with information on how asbestos waste is managed by other states in the Northeast.

## **III. Regular Agenda**

1. CHAPTER 595, State Revolving Fund / AMENDMENT (post to 30-day written public comment period)

Staff: Stephen McLaughlin, Bureau of Land and Water Quality

The Board voted (10-0-0-0) on a motion to post, as modified by the errata sheet, the amendments to Chapter 595 State Revolving Fund to a 30-day written public comment period and establish a deadline of March 16, 2007 for submittal of written public comment. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B), 30-A M.R.S.A. section 5959, and the Federal Water Pollution Control Act 33 USC §§ 1251 et seq..

*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion.*

2. FPL ENERGY WYMAN LLC and WYMAN IV, LLC // LICENSE AMENDMENT (approval of draft order for posting to 30-day written public comment)

Staff: Marc Cone, Bureau of Air Quality

The Board voted (9-0-1-0) on a motion to post the draft proposed order for a Part 70 Air Emission License Amendment for FPL Energy Wyman LLC and Wyman IV, LLC Units #3 and #4 associated with alternative NOx emission limits to a 30-day written public comment period. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2) and 06-096 CMR Chapter 145, NOx Control Program.

*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale recused.*

3. SPURWINK WOODS L.L.C // SUBDIVISION (appeals by Richard Bryant, Jeanne Najemy, Lyndon Keck and Holly Hofmann) Staff: William Bullard, Bureau of Land and Water Quality

The Board voted (10-0-0-0) on a motion to deny the appeals of Richard Bryant and Jeanne Najemy, and Lyndon Keck and Holly Hofmann, to affirm the Commissioner's decision L-22723-NJ-A-N / L-22723-TB-B-N and to approve the draft proposed order as presented. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(4) and 06-096 CMR Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters.

*Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion.*

4. ANTHONY AND ERIN ULIANO, APPLICATION FOR PRIVATE RECREATIONAL DOCK (decision) Staff: James Cassida, Bureau of Land and Water Quality

The Board voted (4-3-1-2) on a motion to grant the appeal of Sand Point Association and Lynn and Brad Thompson and deny the application of Anthony and Erin Uliano to construct a private recreational pier in Bar Harbor, and to approve the draft proposed order as modified below. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(4), and 06-096 CMR Chapter 2.

*Board members Nancy Anderson, Ernest Hilton, Virginia Plummer and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, Don Guimond and Matt Scott voted opposed. Board member M. Wing Goodale recused. Board members Denis Culley and Richard Gould were absent.*

Page 4 of the draft proposed order

... They presented **credible** testimony and evidence that they and others, including families with young children as well

Page 7 of the draft proposed – first paragraph

...width of the intertidal area (approximately ~~85~~ **95** feet) at a height above grade...

... views of Eastern Bay from the Common Lot. **The Board finds that the proposed pier would have a significant adverse impact on the scenic and aesthetic value of the wetland.**

Page 8 add new sentence in second paragraph

.... However, the impact to the protected natural resource, which is currently enjoyed by persons walking the beach and boating in Eastern Bay, would be significant and long term. **As it is, during most tide levels, the applicants may use the site for swimming and boating; given the significant impacts of this project, the expectation of all tides access from a pier for such recreation is in this case unreasonable.** Moreover...

**Next Regular Board Meeting –Thursday, February 15, 2007 – Augusta Civic Center, Augusta**